

By Senator Detert

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1 A bill to be entitled
2 An act relating to the state ombudsman program;
3 amending s. 400.0060, F.S.; revising and providing
4 definitions; amending s. 400.0061, F.S.; revising
5 legislative intent with respect to citizen ombudsmen;
6 deleting references to ombudsman councils and
7 transferring their responsibilities to representatives
8 of the Office of State Long-Term Care Ombudsman;
9 amending s. 400.0063, F.S.; revising duties of the
10 office; amending s. 400.0065, F.S.; revising the
11 purpose of the office; revising the duties and
12 authority of the state ombudsman; requiring the state
13 ombudsman to submit an annual report to the Governor,
14 the Legislature, and specified agencies and entities;
15 amending s. 400.0067, F.S.; revising duties and
16 membership of the State Long-Term Care Ombudsman
17 Council; amending s. 400.0069, F.S.; requiring the
18 state ombudsman to designate and direct program
19 districts; providing duties of representatives of the
20 office in the districts; revising the appointments of
21 and qualifications for district ombudsmen; prohibiting
22 certain individuals from serving as ombudsmen;
23 deleting provisions that provide for an election of a
24 chair of a local council and the meeting times for the
25 local council; amending s. 400.0070, F.S.; providing
26 conditions under which a representative of the office
27 could be found to have a conflict of interest;
28 requiring the Department of Elderly Affairs, in
29 consultation with the state ombudsman, to define by

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30 rule what constitutes a conflict of interest; amending
31 s. 400.0071, F.S.; requiring the Department of Elderly
32 Affairs to consult with the state ombudsman to adopt
33 rules pertaining to complaint procedures; amending s.
34 400.0073, F.S.; providing procedures for investigation
35 of complaints; amending s. 400.0074, F.S.; revising
36 procedures for conducting onsite administrative
37 assessments; authorizing the department to adopt
38 rules; amending s. 400.0075, F.S.; revising complaint
39 notification and resolution procedures; amending s.
40 400.0078, F.S.; providing for a resident or
41 representative of a resident to receive additional
42 information regarding resident rights; amending s.
43 400.0079, F.S.; providing immunity from liability for
44 a representative of the office under certain
45 circumstances; amending s. 400.0081, F.S.; requiring
46 long-term care facilities to provide representatives
47 of the office with access to facilities, residents,
48 and records for certain purposes; amending s.
49 400.0083, F.S.; conforming provisions to changes made
50 by the act; amending s. 400.0087, F.S.; providing for
51 the office to coordinate ombudsman services with
52 Disability Rights Florida; amending s. 400.0089, F.S.;
53 conforming provisions to changes made by the act;
54 amending s. 400.0091, F.S.; revising training
55 requirements for representatives of the office and
56 ombudsmen; amending ss. 20.41, 400.021, 400.022,
57 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23,
58 400.235, 415.102, 415.1034, 415.104, 415.1055,

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59 415.106, 415.107, 429.02, 429.07, 429.19, 429.26,
 60 429.28, 429.34, 429.35, 429.67, 429.85, and 744.444,
 61 F.S.; conforming provisions to changes made by the
 62 act; providing an effective date.

64 Be It Enacted by the Legislature of the State of Florida:

66 Section 1. Section 400.0060, Florida Statutes, is amended
 67 to read:

68 400.0060 Definitions.—When used in this part, unless the
 69 context clearly dictates otherwise, the term:

70 (1) "Administrative assessment" means a review of
 71 conditions in a long-term care facility which impact the rights,
 72 health, safety, and welfare of residents with the purpose of
 73 noting needed improvement and making recommendations to enhance
 74 the quality of life for residents.

75 (2) "Agency" means the Agency for Health Care
 76 Administration.

77 (3) "Department" means the Department of Elderly Affairs.

78 (4) "District" means a geographical area designated by the
 79 state ombudsman in which individuals certified as ombudsmen
 80 carry out the duties of the state ombudsman program ~~"Local~~
 81 ~~council" means a local long-term care ombudsman council~~
 82 ~~designated by the ombudsman pursuant to s. 400.0069. Local~~
 83 ~~councils are also known as district long-term care ombudsman~~
 84 ~~councils or district councils.~~

85 (5) "Long-term care facility" means a nursing home
 86 facility, assisted living facility, adult family-care home,
 87 board and care facility, facility in which continuing long-term

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88 care is provided, or any other similar residential adult care
89 facility.

90 (6) "Office" means the Office of State Long-Term Care
91 Ombudsman created by s. 400.0063.

92 (7) "Ombudsman" means an individual who has been certified
93 by the state ombudsman as meeting the requirements of ss.
94 400.0069, 400.0070, and 400.0091 ~~the individual appointed by the~~
95 ~~Secretary of Elderly Affairs to head the Office of State Long-~~
96 ~~Term Care Ombudsman.~~

97 (8) "Representative of the office" means the state
98 ombudsman, an employee of the office, or an individual certified
99 as an ombudsman.

100 (9)~~(8)~~ "Resident" means an individual 18 ~~60~~ years of age or
101 older who resides in a long-term care facility.

102 (10)~~(9)~~ "Secretary" means the Secretary of Elderly Affairs.

103 (11)~~(10)~~ "State council" means the State Long-Term Care
104 Ombudsman Council created by s. 400.0067.

105 (12) "State ombudsman" means the individual appointed by
106 the Secretary of Elderly Affairs to head the Office of State
107 Long-Term Care Ombudsman.

108 (13) "State ombudsman program" means the program operating
109 under the direction of the office.

110 Section 2. Section 400.0061, Florida Statutes, is amended
111 to read:

112 400.0061 Legislative findings and intent; long-term care
113 facilities.—

114 (1) The Legislature finds that conditions in long-term care
115 facilities in this state are such that the rights, health,
116 safety, and welfare of residents are not fully ensured by rules

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117 of the Department of Elderly Affairs or the Agency for Health
 118 Care Administration or by the good faith of owners or operators
 119 of long-term care facilities. Furthermore, there is a need for a
 120 formal mechanism whereby a long-term care facility resident, a
 121 representative of a long-term care facility resident, or any
 122 other concerned citizen may make a complaint against the
 123 facility or its employees, or against other persons who are in a
 124 position to restrict, interfere with, or threaten the rights,
 125 health, safety, or welfare of a long-term care facility
 126 resident. The Legislature finds that concerned citizens are
 127 often more effective advocates for the rights of others than
 128 governmental agencies. The Legislature further finds that in
 129 order to be eligible to receive an allotment of funds authorized
 130 and appropriated under the federal Older Americans Act, the
 131 state must establish and operate an Office of State Long-Term
 132 Care Ombudsman, to be headed by the state ~~Long-Term Care~~
 133 ombudsman, and carry out a state ~~long-term care~~ ombudsman
 134 program.

135 (2) It is the intent of the Legislature, therefore, to use
 136 ~~utilize~~ voluntary citizen ombudsmen ~~ombudsman councils~~ under the
 137 leadership of the state ombudsman, and, through them, to operate
 138 a state ~~an~~ ombudsman program, which shall, without interference
 139 by any executive agency, undertake to discover, investigate, and
 140 determine the presence of conditions or individuals who ~~which~~
 141 constitute a threat to the rights, health, safety, or welfare of
 142 the residents of long-term care facilities. To ensure that the
 143 effectiveness and efficiency of such investigations are not
 144 impeded by advance notice or delay, the Legislature intends that
 145 representatives of the office ~~ombudsman and ombudsman councils~~

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146 ~~and their designated representatives~~ not be required to obtain
147 warrants in order to enter into or conduct investigations or
148 onsite administrative assessments of long-term care facilities.
149 It is the further intent of the Legislature that the environment
150 in long-term care facilities be conducive to the dignity and
151 independence of residents and that investigations by
152 representatives of the office ~~ombudsman councils~~ shall further
153 the enforcement of laws, rules, and regulations that safeguard
154 the health, safety, and welfare of residents.

155 Section 3. Section 400.0063, Florida Statutes, is amended
156 to read:

157 400.0063 Establishment of Office of State Long-Term Care
158 Ombudsman; designation of ombudsman and legal advocate.—

159 (1) There is created an Office of State Long-Term Care
160 Ombudsman in the Department of Elderly Affairs.

161 (2) (a) The Office of State Long-Term Care Ombudsman shall
162 be headed by the state ~~Long-Term Care~~ ombudsman, who shall serve
163 on a full-time basis and shall personally, or through
164 representatives of the office, carry out the purposes and
165 functions of the state ombudsman program ~~office~~ in accordance
166 with state and federal law.

167 (b) The state ombudsman shall be appointed by and shall
168 serve at the pleasure of the Secretary of Elderly Affairs. The
169 secretary shall appoint a person who has expertise and
170 experience in the fields of long-term care and advocacy to serve
171 as state ombudsman.

172 (3) (a) There is created in the office the position of legal
173 advocate, who shall be selected by and serve at the pleasure of
174 the state ombudsman and shall be a member in good standing of

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175 The Florida Bar.

176 (b) The duties of the legal advocate shall include, but not
177 be limited to:

178 1. Assisting the state ombudsman in carrying out the duties
179 of the office with respect to the abuse, neglect, exploitation,
180 or violation of rights of residents of long-term care
181 facilities.

182 2. Assisting the state council and representatives of the
183 office ~~local councils~~ in carrying out their responsibilities
184 under this part.

185 3. Pursuing administrative, legal, and other appropriate
186 remedies on behalf of residents.

187 4. Serving as legal counsel to the state council and
188 representatives of the office ~~local councils, or individual~~
189 ~~members thereof,~~ against ~~whom~~ any suit or other legal action
190 that is initiated in connection with the performance of the
191 official duties of the state ombudsman program ~~councils or an~~
192 ~~individual member~~.

193 Section 4. Section 400.0065, Florida Statutes, is amended
194 to read:

195 400.0065 Office of State Long-Term Care Ombudsman; duties
196 and responsibilities.-

197 (1) The purpose of the Office of State Long-Term Care
198 Ombudsman ~~is shall be~~ to:

199 (a) Identify, investigate, and resolve complaints made by
200 or on behalf of residents of long-term care facilities relating
201 to actions or omissions by providers or representatives of
202 providers of long-term care services, other public or private
203 agencies, guardians, or representative payees that may adversely

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204 affect the health, safety, welfare, or rights of the residents.

205 (b) Provide services that assist in protecting the health,
206 safety, welfare, and rights of residents.

207 (c) Inform residents, their representatives, and other
208 citizens about obtaining the services of the state ~~Long-Term~~
209 ~~Care~~ ombudsman program and its representatives.

210 (d) Ensure that residents have regular and timely access to
211 the services provided through the office and that residents and
212 complainants receive timely responses from representatives of
213 the office to their complaints.

214 (e) Represent the interests of residents before
215 governmental agencies and seek administrative, legal, and other
216 remedies to protect the health, safety, welfare, and rights of
217 the residents.

218 (f) Administer the state council ~~and local councils~~.

219 (g) Analyze, comment on, and monitor the development and
220 implementation of federal, state, and local laws, rules, and
221 regulations, and other governmental policies and actions, that
222 pertain to the health, safety, welfare, and rights of the
223 residents, with respect to the adequacy of long-term care
224 facilities and services in the state, and recommend any changes
225 in such laws, rules, regulations, policies, and actions as the
226 office determines to be appropriate and necessary.

227 (h) Provide technical support for the development of
228 resident and family councils to protect the well-being and
229 rights of residents.

230 (2) The state ~~Long-Term-Care~~ ombudsman has ~~shall have~~ the
231 duty and authority to:

232 (a) Establish and coordinate districts ~~local councils~~

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233 throughout the state.

234 (b) Perform the duties specified in state and federal law,
235 rules, and regulations.

236 (c) Within the limits of appropriated federal and state
237 funding, employ such personnel ~~as are~~ necessary to perform
238 adequately the functions of the office and provide or contract
239 for legal services to assist the state council and
240 representatives of the office ~~local councils~~ in the performance
241 of their duties. ~~Staff positions established for the purpose of~~
242 ~~coordinating the activities of each local council and assisting~~
243 ~~its members may be filled by the ombudsman after approval by the~~
244 ~~secretary. Notwithstanding any other provision of this part,~~
245 ~~upon certification by the ombudsman that the staff member hired~~
246 ~~to fill any such position has completed the initial training~~
247 ~~required under s. 400.0091, such person shall be considered a~~
248 ~~representative of the State Long-Term Care Ombudsman Program for~~
249 ~~purposes of this part.~~

250 (d) Contract for services necessary to carry out the
251 activities of the office.

252 (e) Apply for, receive, and accept grants, gifts, or other
253 payments, including, but not limited to, real property, personal
254 property, and services from a governmental entity or other
255 public or private entity or person, and make arrangements for
256 the use of such grants, gifts, or payments.

257 (f) Coordinate, to the greatest extent possible, state and
258 local ombudsman services with the protection and advocacy
259 systems for individuals with developmental disabilities and
260 mental illnesses and with legal assistance programs for the poor
261 through adoption of memoranda of understanding and other means.

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262 ~~(g) Enter into a cooperative agreement with the Statewide~~
263 ~~Advocacy Council for the purpose of coordinating and avoiding~~
264 ~~duplication of advocacy services provided to residents.~~

265 (g)~~(h)~~ Enter into a cooperative agreement with the Medicaid
266 Fraud Division as prescribed under s. 731(e)(2)(B) of the Older
267 Americans Act.

268 (h)~~(i)~~ Prepare an annual report describing the activities
269 carried out by the office, the state council, and the districts
270 ~~local councils~~ in the year for which the report is prepared. The
271 state ombudsman shall submit the report to the secretary, the
272 United States Assistant Secretary for Aging, the Governor, the
273 President of the Senate, the Speaker of the House of
274 Representatives, the Secretary of Children and Families, and the
275 Secretary of Health Care Administration at least 30 days before
276 the convening of the regular session of the Legislature. ~~The~~
277 ~~secretary shall in turn submit the report to the United States~~
278 ~~Assistant Secretary for Aging, the Governor, the President of~~
279 ~~the Senate, the Speaker of the House of Representatives, the~~
280 ~~Secretary of Children and Family Services, and the Secretary of~~
281 ~~Health Care Administration.~~ The report must ~~shall~~, at a minimum:

282 1. Contain and analyze data collected concerning complaints
283 about and conditions in long-term care facilities and the
284 disposition of such complaints.

285 2. Evaluate the problems experienced by residents.

286 3. Analyze the successes of the state ombudsman program
287 during the preceding year, including an assessment of how
288 successfully the office ~~program~~ has carried out its
289 responsibilities under the Older Americans Act.

290 4. Provide recommendations for policy, regulatory, and

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291 statutory changes designed to solve identified problems; resolve
 292 residents' complaints; improve residents' lives and quality of
 293 care; protect residents' rights, health, safety, and welfare;
 294 and remove any barriers to the optimal operation of the state
 295 ~~Long-Term Care~~ ombudsman program.

296 5. Contain recommendations from the state ~~Long-Term Care~~
 297 ~~Ombudsman~~ council regarding program functions and activities and
 298 recommendations for policy, regulatory, and statutory changes
 299 designed to protect residents' rights, health, safety, and
 300 welfare.

301 6. Contain any relevant recommendations from
 302 representatives of the office ~~local councils~~ regarding program
 303 functions and activities.

304 Section 5. Section 400.0067, Florida Statutes, is amended
 305 to read:

306 400.0067 State Long-Term Care Ombudsman Council; duties;
 307 membership.-

308 (1) There is created, within the Office of State Long-Term
 309 Care Ombudsman, the State Long-Term Care Ombudsman Council.

310 (2) The state ~~Long-Term Care Ombudsman~~ council shall:

311 (a) Serve as an advisory body to assist the state ombudsman
 312 in reaching a consensus among districts ~~local councils~~ on issues
 313 affecting residents and impacting the optimal operation of the
 314 program.

315 (b) Serve as an appellate body in receiving from the
 316 districts ~~local councils~~ complaints not resolved at the district
 317 ~~local~~ level. Any individual member or members of the state
 318 council may enter any long-term care facility involved in an
 319 appeal, pursuant to the conditions specified in s. 400.0074(2).

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320 (c) Assist the state ombudsman to discover, investigate,
321 and determine the existence of abuse or neglect in any long-term
322 care facility, and work with the adult protective services
323 program as required in ss. 415.101-415.113.

324 (d) Assist the state ombudsman in eliciting, receiving,
325 responding to, and resolving complaints made by or on behalf of
326 residents.

327 (e) Elicit and coordinate state, district ~~local~~, and
328 voluntary organizational assistance for the purpose of improving
329 the care received by residents.

330 (f) Assist the state ombudsman in preparing the annual
331 report described in s. 400.0065.

332 (3) The state ~~Long-Term Care Ombudsman~~ council shall be
333 composed of one active ombudsman from each district ~~local~~
334 ~~council member elected by each local council~~ plus three at-large
335 members appointed by the secretary ~~Governor~~.

336 (a) Each district manager, in consultation with the
337 district ombudsmen, shall select a district ombudsman ~~local~~
338 ~~council shall elect by majority vote a representative from among~~
339 ~~the council members~~ to represent the interests of the district
340 ~~local council~~ on the state council. A ~~local council chair may~~
341 ~~not serve as the representative of the local council on the~~
342 ~~state council~~.

343 (b)1. The state ombudsman ~~secretary~~, ~~after consulting with~~
344 ~~the ombudsman~~, shall submit to the secretary ~~Governor~~ a list of
345 individuals ~~persons~~ recommended for appointment to the at-large
346 positions on the state council. The list may ~~shall~~ not include
347 the name of any individual ~~person~~ who is currently serving in a
348 district ~~on a local council~~.

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349 2. The secretary ~~Governor~~ shall appoint three at-large
350 members chosen from the list.

351 3. If the secretary ~~Governor~~ does not appoint an at-large
352 member to fill a vacant position within 60 days after the list
353 is submitted, the state secretary, ~~after consulting with the~~
354 ~~ombudsman~~, shall appoint an at-large member to fill that vacant
355 position.

356 (4) (a) 1. ~~All~~ State council members shall serve 3-year
357 terms.

358 ~~2.~~ A member of the state council may not serve more than
359 two consecutive terms.

360 (b) 3. A district manager, in consultation with the district
361 ombudsmen, ~~local council~~ may recommend replacement ~~removal~~ of
362 its selected ombudsman ~~elected representative~~ from the state
363 council ~~by a majority vote~~. If the district manager, in
364 consultation with the district ombudsmen, selects a replacement
365 ombudsman, the district manager ~~council votes to remove its~~
366 ~~representative~~, the ~~local council chair~~ shall ~~immediately~~ notify
367 the state ombudsman. ~~The secretary shall advise the Governor of~~
368 ~~the local council's vote upon receiving notice from the~~
369 ~~ombudsman.~~

370 (c) 4. The position of any member missing three state
371 council meetings within a 1-year period without cause may be
372 declared vacant by the state ombudsman. The findings of the
373 state ombudsman regarding cause shall be final and binding.

374 (d) 5. Any vacancy on the state council shall be filled in
375 the same manner as the original appointment.

376 (e) 1. ~~(d)~~ The state council shall elect a chair to serve for
377 a term of 1 year. A chair may not serve more than two

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378 consecutive terms.

379 2. The chair shall select a vice chair from among the
380 members. The vice chair shall preside over the state council in
381 the absence of the chair.

382 3. The chair may create additional executive positions as
383 necessary to carry out the duties of the state council. Any
384 person appointed to an executive position shall serve at the
385 pleasure of the chair, and his or her term shall expire on the
386 same day as the term of the chair.

387 4. A chair may be immediately removed from office before
388 ~~prior to~~ the expiration of his or her term by a vote of two-
389 thirds of all state council members present at any meeting at
390 which a quorum is present. If a chair is removed from office
391 before ~~prior to~~ the expiration of his or her term, a replacement
392 chair shall be chosen during the same meeting in the same manner
393 as described in this paragraph, and the term of the replacement
394 chair shall begin immediately. The replacement chair shall serve
395 for the remainder of the term and is eligible to serve two
396 subsequent consecutive terms.

397 (f) ~~(e)~~ 1. The state council shall meet upon the call of the
398 chair or upon the call of the state ombudsman. The state council
399 shall meet at least quarterly but may meet more frequently as
400 needed.

401 2. A quorum shall be considered present if more than 50
402 percent of all active state council members are in attendance at
403 the same meeting.

404 3. The state council may not vote on or otherwise make any
405 decisions resulting in a recommendation that will directly
406 impact the state council or any district ~~local council~~, outside

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407 of a publicly noticed meeting at which a quorum is present.

408 (g)~~(f)~~ Members may not ~~shall~~ receive ~~no~~ compensation but
409 shall, with approval from the state ombudsman, be reimbursed for
410 per diem and travel expenses as provided in s. 112.061.

411 Section 6. Section 400.0069, Florida Statutes, is amended
412 to read:

413 400.0069 ~~Local~~ Long-term care ombudsman districts ~~councils~~;
414 duties; appointment ~~membership~~.-

415 (1) (a) The state ombudsman shall designate districts ~~local~~
416 ~~long-term care ombudsman councils~~ to carry out the duties of the
417 state ~~Long-Term Care~~ ombudsman program ~~within local communities~~.
418 Each district ~~local council~~ shall function under the direction
419 of the state ombudsman.

420 (b) The state ombudsman shall ensure that there are
421 representatives of the office ~~is at least one local council~~
422 operating in each district ~~of the department's planning and~~
423 ~~service areas. The ombudsman may create additional local~~
424 ~~councils~~ as necessary to ensure that residents throughout the
425 state have adequate access to state ~~Long-Term Care~~ ombudsman
426 program services. ~~The ombudsman, after approval from the~~
427 ~~secretary, shall designate the jurisdictional boundaries of each~~
428 ~~local council.~~

429 (2) The duties of the representatives of the office in the
430 districts ~~local councils~~ are to:

431 (a) Provide services to assist in ~~Serve as a third-party~~
432 ~~mechanism for~~ protecting the health, safety, welfare, and ~~civil~~
433 ~~and human~~ rights of residents.

434 (b) Discover, investigate, and determine the existence of
435 abuse, ~~or~~ neglect, or exploitation using ~~in any long-term care~~

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436 ~~facility and to use~~ the procedures provided for in ss. 415.101-
437 415.113 when applicable.

438 (c) Identify ~~Elicit, receive,~~ investigate, ~~respond to,~~ and
439 resolve complaints made by or on behalf of residents relating to
440 actions or omissions by providers or representatives of
441 providers of long-term care services, other public or private
442 agencies, guardians, or representative payees which may
443 adversely affect the health, safety, welfare, or rights of
444 residents.

445 (d) Review and, if necessary, comment on all existing or
446 proposed rules, regulations, and other governmental policies and
447 actions relating to long-term care facilities that may
448 potentially have an effect on the ~~rights,~~ health, safety,
449 welfare, and rights ~~welfare~~ of residents.

450 (e) Review personal property and money accounts of
451 residents who are receiving assistance under the Medicaid
452 program pursuant to an investigation to obtain information
453 regarding a specific complaint ~~or problem.~~

454 (f) Recommend that the state ombudsman and the legal
455 advocate seek administrative, legal, and other remedies to
456 protect the health, safety, welfare, and rights of ~~the~~
457 residents.

458 (g) Provide technical assistance for the development of
459 resident and family councils within long-term care facilities.

460 (h) ~~(g)~~ Carry out other activities that the state ombudsman
461 determines to be appropriate.

462 (3) In order to carry out the duties specified in
463 subsection (2), a representative of the office may ~~member of a~~
464 ~~local council is authorized to~~ enter any long-term care facility

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465 without notice or without first obtaining a warrant; however,
 466 ~~subject to the provisions of s. 400.0074(2)~~ may apply regarding
 467 notice of a followup administrative assessment.

468 (4) Each district local council shall be composed of
 469 ombudsmen ~~members~~ whose primary residences are ~~residence is~~
 470 located within the boundaries of the district local council's
 471 jurisdiction.

472 (a) Upon good cause shown, the state ombudsman may appoint
 473 an ombudsman to another district. ~~The ombudsman shall strive to~~
 474 ~~ensure that each local council include the following persons as~~
 475 ~~members:~~

476 1. ~~At least one medical or osteopathic physician whose~~
 477 ~~practice includes or has included a substantial number of~~
 478 ~~geriatric patients and who may practice in a long term care~~
 479 ~~facility;~~

480 2. ~~At least one registered nurse who has geriatric~~
 481 ~~experience;~~

482 3. ~~At least one licensed pharmacist;~~

483 4. ~~At least one registered dietitian;~~

484 5. ~~At least six nursing home residents or representative~~
 485 ~~consumer advocates for nursing home residents;~~

486 6. ~~At least three residents of assisted living facilities~~
 487 ~~or adult family care homes or three representative consumer~~
 488 ~~advocates for alternative long term care facility residents;~~

489 7. ~~At least one attorney; and~~

490 8. ~~At least one professional social worker.~~

491 (b) The following individuals may not be appointed as
 492 ombudsmen:

493 1. The owner or representative of a long-term care

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494 facility.

495 2. A provider or representative of a provider of long-term
496 care service.

497 3. An employee of the agency.

498 4. An employee of the department, except for a
499 representative of the office.

500 5. An employee of the Department of Children and Families.

501 6. An employee of the Agency for Persons with Disabilities

502 ~~In no case shall the medical director of a long-term care~~
503 ~~facility or an employee of the agency, the department, the~~
504 ~~Department of Children and Family Services, or the Agency for~~
505 ~~Persons with Disabilities serve as a member or as an ex officio~~
506 ~~member of a council.~~

507 (5) (a) To be appointed as an ombudsman, an individual must:

508 1. Individuals wishing to join a local council shall Submit
509 an application to the state ombudsman or his or her designee.

510 2. Successfully complete level 2 background screening
511 pursuant to s. 430.0402 and chapter 435 ~~The ombudsman shall~~
512 ~~review the individual's application and advise the secretary of~~
513 ~~his or her recommendation for approval or disapproval of the~~
514 ~~candidate's membership on the local council. If the secretary~~
515 ~~approves of the individual's membership, the individual shall be~~
516 ~~appointed as a member of the local council.~~

517 (b) The state ombudsman shall approve or deny the
518 appointment of the individual as an ombudsman ~~The secretary may~~
519 ~~rescind the ombudsman's approval of a member on a local council~~
520 ~~at any time. If the secretary rescinds the approval of a member~~
521 ~~on a local council, the ombudsman shall ensure that the~~
522 ~~individual is immediately removed from the local council on~~

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523 ~~which he or she serves and the individual may no longer~~
524 ~~represent the State Long-Term Care Ombudsman Program until the~~
525 ~~secretary provides his or her approval.~~

526 (c) Upon appointment as an ombudsman, the individual may
527 participate in district activities but may not represent the
528 office or conduct any authorized program duties until the
529 individual has completed the initial training specified in s.
530 400.0091(1) and has been certified by the state ombudsman.

531 (d) The state ombudsman, for good cause shown, such as
532 development of a conflict of interest, failure to adhere to the
533 policies and procedures established by the office, or
534 demonstrated inability to carry out the responsibilities of the
535 office, may rescind the appointment of an individual as an
536 ombudsman. After the appointment is rescinded, the individual
537 may not conduct any duties as an ombudsman and may not represent
538 the office or the state ombudsman program ~~A local council may~~
539 ~~recommend the removal of one or more of its members by~~
540 ~~submitting to the ombudsman a resolution adopted by a two-thirds~~
541 ~~vote of the members of the council stating the name of the~~
542 ~~member or members recommended for removal and the reasons for~~
543 ~~the recommendation. If such a recommendation is adopted by a~~
544 ~~local council, the local council chair or district coordinator~~
545 ~~shall immediately report the council's recommendation to the~~
546 ~~ombudsman. The ombudsman shall review the recommendation of the~~
547 ~~local council and advise the secretary of his or her~~
548 ~~recommendation regarding removal of the council member or~~
549 ~~members.~~

550 ~~(6) (a) Each local council shall elect a chair for a term of~~
551 ~~1 year. There shall be no limitation on the number of terms that~~

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552 ~~an approved member of a local council may serve as chair.~~

553 ~~(b) The chair shall select a vice chair from among the~~
554 ~~members of the council. The vice chair shall preside over the~~
555 ~~council in the absence of the chair.~~

556 ~~(c) The chair may create additional executive positions as~~
557 ~~necessary to carry out the duties of the local council. Any~~
558 ~~person appointed to an executive position shall serve at the~~
559 ~~pleasure of the chair, and his or her term shall expire on the~~
560 ~~same day as the term of the chair.~~

561 ~~(d) A chair may be immediately removed from office prior to~~
562 ~~the expiration of his or her term by a vote of two thirds of the~~
563 ~~members of the local council. If any chair is removed from~~
564 ~~office prior to the expiration of his or her term, a replacement~~
565 ~~chair shall be elected during the same meeting, and the term of~~
566 ~~the replacement chair shall begin immediately. The replacement~~
567 ~~chair shall serve for the remainder of the term of the person he~~
568 ~~or she replaced.~~

569 ~~(7) Each local council shall meet upon the call of its~~
570 ~~chair or upon the call of the ombudsman. Each local council~~
571 ~~shall meet at least once a month but may meet more frequently if~~
572 ~~necessary.~~

573 ~~(6)(8) An ombudsman may not~~ A member of a local council
574 ~~shall receive no compensation but shall, with approval from the~~
575 ~~state ombudsman, be reimbursed for travel expenses both within~~
576 ~~and outside the jurisdiction of the local council in accordance~~
577 ~~with the provisions of s. 112.061.~~

578 ~~(7)(9) A representative of the office may~~ The local
579 ~~councils are authorized to call upon appropriate state agencies~~
580 ~~of state government for such professional assistance as may be~~

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581 needed in the discharge of his or her ~~their~~ duties, and such-
 582 All state agencies shall cooperate ~~with the local councils~~ in
 583 providing requested information and agency representation at
 584 ~~council meetings~~.

585 Section 7. Section 400.0070, Florida Statutes, is amended
 586 to read:

587 400.0070 Conflicts of interest.-

588 (1) A representative of the office may ~~The ombudsman shall~~
 589 not:

590 (a) Have a direct involvement in the licensing or
 591 certification of, or an ownership or investment interest in, a
 592 long-term care facility or a provider of a long-term care
 593 service.

594 (b) Be employed by, or participate in the management of, a
 595 long-term care facility.

596 (c) Receive, or have a right to receive, directly or
 597 indirectly, remuneration, in cash or in kind, under a
 598 compensation agreement with the owner or operator of a long-term
 599 care facility.

600 (2) Each representative ~~employee~~ of the office, ~~each state~~
 601 ~~council member, and each local council member~~ shall certify that
 602 he or she does not have any ~~has no~~ conflict of interest.

603 (3) The department, in consultation with the state
 604 ombudsman, shall define by rule:

605 (a) Situations that constitute an individual ~~a person~~
 606 having a conflict of interest which ~~that~~ could materially affect
 607 the objectivity or capacity of the individual ~~a person~~ to serve
 608 as a representative ~~on an ombudsman council, or as an employee~~
 609 of the office, ~~while carrying out the purposes of the State~~

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610 ~~Long Term Care Ombudsman Program as specified in this part.~~

611 (b) The procedure by which an individual ~~a person~~ listed in
612 subsection (2) shall certify that he or she does not have a ~~has~~
613 ~~no~~ conflict of interest.

614 Section 8. Section 400.0071, Florida Statutes, is amended
615 to read:

616 400.0071 State ~~Long Term Care~~ ombudsman program complaint
617 procedures.—The department, in consultation with the state
618 ombudsman, shall adopt rules implementing state and local
619 complaint procedures. The rules must include procedures for
620 receiving, investigating, identifying, and resolving complaints
621 concerning the health, safety, welfare, and rights of residents—

622 ~~(1) Receiving complaints against a long-term care facility~~
623 ~~or an employee of a long-term care facility.~~

624 ~~(2) Conducting investigations of a long-term care facility~~
625 ~~or an employee of a long-term care facility subsequent to~~
626 ~~receiving a complaint.~~

627 ~~(3) Conducting onsite administrative assessments of long-~~
628 ~~term care facilities.~~

629 Section 9. Section 400.0073, Florida Statutes, is amended
630 to read:

631 400.0073 Complaint ~~State and local ombudsman council~~
632 investigations.—

633 (1) A representative of the office ~~local council~~ shall
634 identify and investigate, ~~within a reasonable time after a~~
635 ~~complaint is made~~, any complaint made by or on behalf of a
636 resident, ~~a representative of a resident, or any other credible~~
637 ~~source based on an action or omission by an administrator, an~~
638 ~~employee, or a representative of a long-term care facility~~ which

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639 might be:

- 640 (a) Contrary to law;
- 641 (b) Unreasonable, unfair, oppressive, or unnecessarily
- 642 discriminatory, even though in accordance with law;
- 643 (c) Based on a mistake of fact;
- 644 (d) Based on improper or irrelevant grounds;
- 645 (e) Unaccompanied by an adequate statement of reasons;
- 646 (f) Performed in an inefficient manner; or
- 647 (g) Otherwise adversely affecting the health, safety,
- 648 welfare, or rights of a resident.

649 ~~(2) In an investigation, both the state and local councils~~
 650 ~~have the authority to hold public hearings.~~

651 ~~(3) Subsequent to an appeal from a local council, the state~~
 652 ~~council may investigate any complaint received by the local~~
 653 ~~council involving a long term care facility or a resident.~~

654 (2) ~~(4)~~ If a representative of the office ~~the ombudsman or~~
 655 ~~any state or local council member~~ is not allowed to enter a
 656 long-term care facility, the administrator of the facility shall
 657 be considered to have interfered with a representative of the
 658 office, ~~the state council, or the local council~~ in the
 659 performance of official duties as described in s. 400.0083(1)
 660 and to have violated ~~committed a violation of~~ this part. The
 661 representative of the office ~~ombudsman~~ shall report a facility's
 662 refusal to allow entry to the facility to the state ombudsman or
 663 his or her designee, who shall report the incident to the
 664 agency, and the agency shall record the report and take it into
 665 consideration when determining actions allowable under s.
 666 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
 667 429.71.

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668 Section 10. Section 400.0074, Florida Statutes, is amended
669 to read:

670 400.0074 ~~Local ombudsman council~~ Onsite administrative
671 assessments.-

672 (1) A representative of the office shall ~~In addition to any~~
673 ~~specific investigation conducted pursuant to a complaint, the~~
674 ~~local council shall~~ conduct, at least annually, an onsite
675 administrative assessment of each nursing home, assisted living
676 facility, and adult family-care home ~~within its jurisdiction.~~
677 This administrative assessment must be resident-centered and
678 must ~~shall~~ focus on factors affecting the rights, health,
679 safety, and welfare of the residents. ~~Each local council is~~
680 ~~encouraged to conduct a similar onsite administrative assessment~~
681 ~~of each additional long-term care facility within its~~
682 ~~jurisdiction.~~

683 (2) An onsite administrative assessment is ~~conducted by a~~
684 ~~local council shall be~~ subject to the following conditions:

685 (a) To the extent possible and reasonable, the
686 administrative assessment may ~~assessments shall~~ not duplicate
687 the efforts of ~~the agency~~ surveys and inspections conducted by
688 state agencies of long-term care facilities ~~under part II of~~
689 ~~this chapter and parts I and II of chapter 429.~~

690 (b) An administrative assessment shall be conducted at a
691 time and for a duration necessary to produce the information
692 required to complete the assessment ~~carry out the duties of the~~
693 ~~local council.~~

694 (c) Advance notice of an administrative assessment may not
695 be provided to a long-term care facility, except that notice of
696 followup assessments on specific problems may be provided.

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697 (d) A representative of the office ~~local council member~~
698 ~~physically~~ present for the administrative assessment must ~~shall~~
699 identify himself or herself to the administrator ~~and cite the~~
700 ~~specific statutory authority for his or her assessment~~ of the
701 facility or his or her designee.

702 (e) An administrative assessment may not unreasonably
703 interfere with the programs and activities of residents.

704 (f) A representative of the office ~~local council member~~ may
705 not enter a single-family residential unit within a long-term
706 care facility during an administrative assessment without the
707 permission of the resident or the representative of the
708 resident.

709 (g) An administrative assessment shall ~~must~~ be conducted in
710 a manner that does not impose an ~~will impose no~~ unreasonable
711 burden on a long-term care facility.

712 (3) ~~Regardless of jurisdiction, the ombudsman may authorize~~
713 ~~a state or local council member to assist another local council~~
714 ~~to perform the administrative assessments described in this~~
715 ~~section.~~

716 ~~(4)~~ An onsite administrative assessment may not be
717 accomplished by forcible entry. However, if a representative of
718 the office ~~ombudsman or a state or local council member~~ is not
719 allowed to enter a long-term care facility, the administrator of
720 the facility shall be considered to have interfered with a
721 representative of the office, ~~the state council, or the local~~
722 ~~council~~ in the performance of official duties as described in s.
723 400.0083(1) and to have committed a violation of this part. The
724 representative of the office ~~ombudsman~~ shall report the refusal
725 by a facility to allow entry to the state ombudsman or his or

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726 her designee, who shall then report the incident to the agency,
 727 and the agency shall record the report and take it into
 728 consideration when determining actions allowable under s.
 729 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
 730 429.71.

731 (4) The department, in consultation with the state
 732 ombudsman, may adopt rules implementing procedures for
 733 conducting onsite administrative assessments of long-term care
 734 facilities.

735 Section 11. Section 400.0075, Florida Statutes, is amended
 736 to read:

737 400.0075 Complaint notification and resolution procedures.—

738 (1) (a) Any complaint ~~or problem~~ verified by a
 739 representative of the office ~~an ombudsman council~~ as a result of
 740 an investigation may ~~or onsite administrative assessment,~~ which
 741 ~~complaint or problem is determined to require remedial action by~~
 742 ~~the local council,~~ shall be identified and brought to the
 743 attention of the long-term care facility administrator subject
 744 to the confidentiality provisions of s. 400.0077 ~~in writing.~~

745 Upon receipt of the information ~~such document,~~ the
 746 administrator, with the concurrence of the representative of the
 747 office ~~local council chair,~~ shall establish target dates for
 748 taking appropriate remedial action. If, by the target date, the
 749 remedial action is not completed or forthcoming, the
 750 representative may extend the target date if there is reason to
 751 believe such action would facilitate the resolution of the
 752 complaint, or the representative may refer the complaint to the
 753 district manager ~~local council chair may, after obtaining~~
 754 ~~approval from the ombudsman and a majority of the members of the~~

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755 ~~local council:~~

756 ~~1. Extend the target date if the chair has reason to~~
757 ~~believe such action would facilitate the resolution of the~~
758 ~~complaint.~~

759 ~~2. In accordance with s. 400.0077, publicize the complaint,~~
760 ~~the recommendations of the council, and the response of the~~
761 ~~long-term care facility.~~

762 ~~3. Refer the complaint to the state council.~~

763 (b) If an ombudsman determines ~~the local council chair~~
764 ~~believes~~ that the health, safety, welfare, or rights of a ~~the~~
765 resident are in imminent danger, the ombudsman must immediately
766 notify the district manager. The district manager ~~chair shall~~
767 ~~notify the ombudsman or legal advocate, who, after verifying~~
768 that such imminent danger exists, must notify the appropriate
769 state agencies, including law enforcement agencies, the state
770 ombudsman, and the legal advocate to ensure the protection of
771 ~~shall seek immediate legal or administrative remedies to protect~~
772 the resident.

773 (c) If the state ombudsman or legal advocate has reason to
774 believe that the long-term care facility or an employee of the
775 facility has committed a criminal act, the state ombudsman or
776 legal advocate shall provide the local law enforcement agency
777 with the relevant information to initiate an investigation of
778 the case.

779 (2)~~(a)~~ Upon referral from a district ~~local council,~~ the
780 state ombudsman or his or her designee ~~council~~ shall assume the
781 responsibility for the disposition of the complaint. If a long-
782 term care facility fails to take action to resolve or remedy the
783 ~~on a complaint by the state council,~~ the state ombudsman ~~council~~

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784 may, ~~after obtaining approval from the ombudsman and a majority~~
 785 ~~of the state council members:~~

786 (a)1. In accordance with s. 400.0077, publicize the
 787 complaint, the recommendations of the representatives of the
 788 office local or state council, and the response of the long-term
 789 care facility.

790 (b)2. Recommend to the department and the agency a series
 791 of facility reviews pursuant to s. 400.19, s. 429.34, or s.
 792 429.67 to ensure correction and nonrecurrence of the conditions
 793 that gave ~~give~~ rise to the complaint ~~complaints~~ against the a
 794 long-term care facility.

795 (c)3. Recommend to the department and the agency that the
 796 long-term care facility no longer receive payments under any
 797 state assistance program, including Medicaid.

798 (d)4. Recommend to the department and the agency that
 799 procedures be initiated for action against ~~revocation~~ of the
 800 long-term care facility's license in accordance with chapter
 801 120.

802 ~~(b) If the state council chair believes that the health,~~
 803 ~~safety, welfare, or rights of the resident are in imminent~~
 804 ~~danger, the chair shall notify the ombudsman or legal advocate,~~
 805 ~~who, after verifying that such imminent danger exists, shall~~
 806 ~~seek immediate legal or administrative remedies to protect the~~
 807 ~~resident.~~

808 (3)(e) If the state ombudsman, after consultation with the
 809 legal advocate, has reason to believe that the long-term care
 810 facility or an employee of the facility has committed a criminal
 811 act, the office ~~ombudsman~~ shall provide the local law
 812 enforcement agency with the relevant information to initiate an

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813 investigation of the case.

814 Section 12. Section 400.0078, Florida Statutes, is amended
815 to read:

816 400.0078 Citizen access to state ~~Long-Term-Care~~ ombudsman
817 program services.—

818 (1) The office shall establish a statewide toll-free
819 telephone number and e-mail address for receiving complaints
820 concerning matters adversely affecting the health, safety,
821 welfare, or rights of residents.

822 (2) ~~Every resident or representative of a resident shall~~
823 ~~receive,~~ Upon admission to a long-term care facility, each
824 resident or representative of a resident must receive
825 information regarding:

826 (a) The purpose of the state ~~Long-Term-Care~~ ombudsman
827 program.~~7~~

828 (b) The statewide toll-free telephone number and e-mail
829 address for receiving complaints.~~7~~ ~~and~~

830 (c) Information that retaliatory action cannot be taken
831 against a resident for presenting grievances or for exercising
832 any other resident rights.

833 (d) Other relevant information regarding how to contact
834 representatives of the office ~~program.~~

835
836 Residents or their representatives must be furnished additional
837 copies of this information upon request.

838 Section 13. Section 400.0079, Florida Statutes, is amended
839 to read:

840 400.0079 Immunity.—

841 (1) Any person making a complaint pursuant to this part who

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842 does so in good faith shall be immune from any liability, civil
843 or criminal, that otherwise might be incurred or imposed as a
844 direct or indirect result of making the complaint.

845 (2) Representatives of the office and ~~The ombudsman or any~~
846 ~~person authorized by the ombudsman to act on behalf of the~~
847 ~~office, as well as all members of the state council are and~~
848 ~~local councils, shall be~~ immune from any liability, civil or
849 criminal, that otherwise might be incurred or imposed during the
850 good faith performance of official duties.

851 Section 14. Section 400.0081, Florida Statutes, is amended
852 to read:

853 400.0081 Access to facilities, residents, and records.—

854 (1) A long-term care facility shall provide representatives
855 of the office ~~with, the state council and its members, and the~~
856 ~~local councils and their members access to:~~

857 (a) Access to ~~Any portion of~~ the long-term care facility
858 and residents ~~any resident as necessary to investigate or~~
859 ~~resolve a complaint.~~

860 (b) Appropriate access to medical and social records of a
861 resident for review ~~as necessary to investigate or resolve a~~
862 ~~complaint, if:~~

863 1. The representative of the office has the permission of
864 the resident or the legal representative of the resident; or

865 2. The resident is unable to consent to the review and does
866 not have a ~~has no~~ legal representative.

867 (c) Access to medical and social records of a ~~the~~ resident
868 ~~as necessary to investigate or resolve a complaint, if:~~

869 1. A legal representative or guardian of the resident
870 refuses to give permission;

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871 2. A representative of the office has reasonable cause to
872 believe that the legal representative or guardian is not acting
873 in the best interests of the resident; and

874 3. The representative of the office ~~state or local council~~
875 ~~member~~ obtains the approval of the state ombudsman.

876 (d) Access to the administrative records, policies, and
877 documents to which residents or the general public has ~~have~~
878 access.

879 (e) Upon request, copies of all licensing and certification
880 records maintained by the state with respect to a long-term care
881 facility.

882 (2) The department, in consultation with the state
883 ombudsman ~~and the state council~~, may adopt rules to establish
884 procedures to ensure access to facilities, residents, and
885 records as described in this section.

886 Section 15. Section 400.0083, Florida Statutes, is amended
887 to read:

888 400.0083 Interference; retaliation; penalties.—

889 (1) A ~~It shall be unlawful for any~~ person, long-term care
890 facility, or other entity may not ~~to~~ willfully interfere with a
891 representative of the office or, ~~the state council, or a local~~
892 ~~council~~ in the performance of official duties.

893 (2) A ~~It shall be unlawful for any~~ person, long-term care
894 facility, or other entity may not ~~to~~ knowingly or willfully take
895 action or retaliate against any resident, employee, or other
896 person for filing a complaint with, providing information to, or
897 otherwise cooperating with any representative of the office or,
898 ~~the state council, or a local council~~.

899 (3) A ~~Any~~ person, long-term care facility, or other entity

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900 that violates this section:

901 (a) Is ~~shall be~~ liable for damages and equitable relief as
902 determined by law.

903 (b) Commits a misdemeanor of the second degree, punishable
904 as provided in s. 775.083.

905 Section 16. Section 400.0087, Florida Statutes, is amended
906 to read:

907 400.0087 Department oversight; funding.—

908 (1) The department shall meet the costs associated with the
909 state ~~Long-Term-Care~~ ombudsman program from funds appropriated
910 to it.

911 (a) The department shall include the costs associated with
912 support of the state ~~Long-Term-Care~~ ombudsman program when
913 developing its budget requests for consideration by the Governor
914 and submittal to the Legislature.

915 (b) The department may divert from the federal ombudsman
916 appropriation an amount equal to the department's administrative
917 cost ratio to cover the costs associated with administering the
918 state ombudsman program. The remaining allotment from the Older
919 Americans Act program shall be expended on direct ombudsman
920 activities.

921 (2) The department shall monitor the office and ~~the state~~
922 ~~council, and the local councils~~ to ensure that each is carrying
923 out the duties delegated to it by state and federal law.

924 (3) The department is responsible for ensuring that the
925 office:

926 (a) Has the objectivity and independence required to
927 qualify it for funding under the federal Older Americans Act.

928 (b) Provides information to public and private agencies,

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929 legislators, and others.

930 (c) Provides appropriate training to representatives of the
931 office ~~or of the state or local councils.~~

932 (d) Coordinates ombudsman services with Disability Rights
933 Florida ~~the Advocacy Center for Persons with Disabilities~~ and
934 with providers of legal services to residents ~~of long-term care~~
935 ~~facilities~~ in compliance with state and federal laws.

936 (4) The department shall also:

937 (a) Receive and disburse state and federal funds for
938 purposes that the state ombudsman has formulated in accordance
939 with the Older Americans Act.

940 (b) Whenever necessary, act as liaison between agencies and
941 branches of the federal and state governments and the office
942 ~~State Long-Term Care Ombudsman Program.~~

943 Section 17. Section 400.0089, Florida Statutes, is amended
944 to read:

945 400.0089 Complaint data reports.—The office shall maintain
946 a statewide uniform reporting system to collect and analyze data
947 relating to complaints and conditions in long-term care
948 facilities and to residents for the purpose of identifying and
949 resolving significant complaints ~~problems~~. The office shall
950 publish quarterly and make readily available information
951 pertaining to the number and types of complaints received by the
952 state ~~Long-Term Care~~ ombudsman program and shall include such
953 information in the annual report required under s. 400.0065.

954 Section 18. Section 400.0091, Florida Statutes, is amended
955 to read:

956 400.0091 Training.—The state ombudsman shall ensure that
957 appropriate training is provided to all representatives

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958 ~~employees of the office and to the members of the state and~~
 959 ~~local councils.~~

960 (1) All representatives ~~state and local council members and~~
 961 ~~employees~~ of the office shall be given a minimum of 20 hours of
 962 training upon employment with the office or appointment as an
 963 ombudsman. ~~Ten approval as a state or local council member and~~
 964 ~~10~~ hours of continuing education is required annually
 965 thereafter.

966 (2) The state ombudsman shall approve the curriculum for
 967 the initial and continuing education training, which must, at a
 968 minimum, address:

969 (a) Resident confidentiality.

970 (b) Guardianships and powers of attorney.

971 (c) Medication administration.

972 (d) Care and medication of residents with dementia and
 973 Alzheimer's disease.

974 (e) Accounting for residents' funds.

975 (f) Discharge rights and responsibilities.

976 (g) Cultural sensitivity.

977 (h) Any other topic related to residency within a long-term
 978 care facility ~~recommended by the secretary.~~

979 (3) An individual ~~No employee, officer, or representative~~
 980 ~~of the office or of the state or local councils,~~ other than the
 981 state ombudsman, may not hold himself or herself out as a
 982 representative of the office ~~State Long-Term Care Ombudsman~~
 983 ~~Program~~ or conduct any authorized program duty described in this
 984 part unless the individual ~~person~~ has received the training
 985 required by this section and has been certified by the state
 986 ombudsman as qualified to carry out ombudsman activities on

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987 behalf of the office ~~or the state or local councils.~~

988 Section 19. Subsection (4) of section 20.41, Florida
989 Statutes, is amended to read:

990 20.41 Department of Elderly Affairs.—There is created a
991 Department of Elderly Affairs.

992 (4) The department shall administer the Office of State
993 Long-Term Care Ombudsman Council, created by s. 400.0063
994 ~~400.0067~~, and the ~~local long-term care ombudsman councils,~~
995 ~~created by s. 400.0069~~ and shall, as required by s. 712 of the
996 federal Older Americans Act of 1965, ensure that ~~both~~ the state
997 office operates and ~~local long-term care ombudsman councils~~
998 ~~operate~~ in compliance with the Older Americans Act.

999 Section 20. Subsections (10) through (19) of section
1000 400.021, Florida Statutes, are amended to read:

1001 400.021 Definitions.—When used in this part, unless the
1002 context otherwise requires, the term:

1003 ~~(10) "Local ombudsman council" means a local long-term care~~
1004 ~~ombudsman council established pursuant to s. 400.0069, located~~
1005 ~~within the Older Americans Act planning and service areas.~~

1006 (10)~~(11)~~ "Nursing home bed" means an accommodation which is
1007 ready for immediate occupancy, or is capable of being made ready
1008 for occupancy within 48 hours, excluding provision of staffing;
1009 and which conforms to minimum space requirements, including the
1010 availability of appropriate equipment and furnishings within the
1011 48 hours, as specified by rule of the agency, for the provision
1012 of services specified in this part to a single resident.

1013 (11)~~(12)~~ "Nursing home facility" means any facility which
1014 provides nursing services as defined in part I of chapter 464
1015 and which is licensed according to this part.

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1016 (12)~~(13)~~ "Nursing service" means such services or acts as
1017 may be rendered, directly or indirectly, to and in behalf of a
1018 person by individuals as defined in s. 464.003.

1019 (13) "Office" has the same meaning as in s. 400.0060.

1020 (14) "Planning and service area" means the geographic area
1021 in which the Older Americans Act programs are administered and
1022 services are delivered by the Department of Elderly Affairs.

1023 (15) "Representative of the office" has the same meaning as
1024 in s. 400.0060.

1025 (16)~~(15)~~ "Respite care" means admission to a nursing home
1026 for the purpose of providing a short period of rest or relief or
1027 emergency alternative care for the primary caregiver of an
1028 individual receiving care at home who, without home-based care,
1029 would otherwise require institutional care.

1030 (17)~~(16)~~ "Resident care plan" means a written plan
1031 developed, maintained, and reviewed not less than quarterly by a
1032 registered nurse, with participation from other facility staff
1033 and the resident or his or her designee or legal representative,
1034 which includes a comprehensive assessment of the needs of an
1035 individual resident; the type and frequency of services required
1036 to provide the necessary care for the resident to attain or
1037 maintain the highest practicable physical, mental, and
1038 psychosocial well-being; a listing of services provided within
1039 or outside the facility to meet those needs; and an explanation
1040 of service goals.

1041 (18)~~(17)~~ "Resident designee" means a person, other than the
1042 owner, administrator, or employee of the facility, designated in
1043 writing by a resident or a resident's guardian, if the resident
1044 is adjudicated incompetent, to be the resident's representative

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1045 for a specific, limited purpose.

1046 (19)~~(18)~~ "State ombudsman program council" has the same
 1047 meaning as in s. 400.0060 ~~means the State Long-Term Care~~
 1048 ~~Ombudsman Council established pursuant to s. 400.0067.~~

1049 (20)~~(19)~~ "Therapeutic spa services" means bathing, nail,
 1050 and hair care services and other similar services related to
 1051 personal hygiene.

1052 Section 21. Paragraph (c) of subsection (1) and subsections
 1053 (2) and (3) of section 400.022, Florida Statutes, are amended to
 1054 read:

1055 400.022 Residents' rights.—

1056 (1) All licensees of nursing home facilities shall adopt
 1057 and make public a statement of the rights and responsibilities
 1058 of the residents of such facilities and shall treat such
 1059 residents in accordance with the provisions of that statement.
 1060 The statement shall assure each resident the following:

1061 (c) Any entity or individual that provides health, social,
 1062 legal, or other services to a resident has the right to have
 1063 reasonable access to the resident. The resident has the right to
 1064 deny or withdraw consent to access at any time by any entity or
 1065 individual. Notwithstanding the visiting policy of the facility,
 1066 the following individuals must be permitted immediate access to
 1067 the resident:

1068 1. Any representative of the federal or state government,
 1069 including, but not limited to, representatives of the Department
 1070 of Children and Families ~~Family Services~~, the Department of
 1071 Health, the Agency for Health Care Administration, the Office of
 1072 the Attorney General, and the Department of Elderly Affairs; any
 1073 law enforcement officer; any representative ~~members~~ of the

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1074 ~~office state or local ombudsman council~~; and the resident's
1075 individual physician.

1076 2. Subject to the resident's right to deny or withdraw
1077 consent, immediate family or other relatives of the resident.

1078
1079 The facility must allow representatives of the office state
1080 ~~Long-Term Care ombudsman Council~~ to examine a resident's
1081 clinical records with the permission of the resident or the
1082 resident's legal representative and consistent with state law.

1083 (2) The licensee for each nursing home shall orally inform
1084 the resident of the resident's rights and provide a copy of the
1085 statement required by subsection (1) to each resident or the
1086 resident's legal representative at or before the resident's
1087 admission to a facility. The licensee shall provide a copy of
1088 the resident's rights to each staff member of the facility. Each
1089 such licensee shall prepare a written plan and provide
1090 appropriate staff training to implement ~~the provisions of this~~
1091 section. The written statement of rights must include a
1092 statement that a resident may file a complaint with the agency
1093 or state local ombudsman program council. The statement must be
1094 in boldfaced type and ~~shall~~ include the ~~name, address, and~~
1095 telephone number and e-mail address of the state numbers of the
1096 ~~local~~ ombudsman program council and the telephone number of the
1097 central abuse hotline where complaints may be lodged.

1098 (3) Any violation of the resident's rights set forth in
1099 this section constitutes ~~shall constitute~~ grounds for action by
1100 the agency under ~~the provisions of~~ s. 400.102, s. 400.121, or
1101 part II of chapter 408. In order to determine whether the
1102 licensee is adequately protecting residents' rights, the

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1103 licensure inspection of the facility must ~~shall~~ include private
1104 informal conversations with a sample of residents to discuss
1105 residents' experiences within the facility with respect to
1106 rights specified in this section and general compliance with
1107 standards, and consultation with the state ombudsman program
1108 ~~council in the local planning and service area of the Department~~
1109 ~~of Elderly Affairs in which the nursing home is located.~~

1110 Section 22. Subsections (8), (9), and (11) through (14) of
1111 section 400.0255, Florida Statutes, are amended to read:

1112 400.0255 Resident transfer or discharge; requirements and
1113 procedures; hearings.-

1114 (8) The notice required by subsection (7) must be in
1115 writing and must contain all information required by state and
1116 federal law, rules, or regulations applicable to Medicaid or
1117 Medicare cases. The agency shall develop a standard document to
1118 be used by all facilities licensed under this part for purposes
1119 of notifying residents of a discharge or transfer. Such document
1120 must include a means for a resident to request the office local
1121 ~~long-term care ombudsman council~~ to review the notice and
1122 request information about or assistance with initiating a fair
1123 hearing with the department's Office of Appeals Hearings. In
1124 addition to any other pertinent information included, the form
1125 shall specify the reason allowed under federal or state law that
1126 the resident is being discharged or transferred, with an
1127 explanation to support this action. Further, the form must ~~shall~~
1128 state the effective date of the discharge or transfer and the
1129 location to which the resident is being discharged or
1130 transferred. The form must ~~shall~~ clearly describe the resident's
1131 appeal rights and the procedures for filing an appeal, including

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1132 the right to request the office ~~local ombudsman council~~ to
1133 review the notice of discharge or transfer. A copy of the notice
1134 must be placed in the resident's clinical record, and a copy
1135 must be transmitted to the resident's legal guardian or
1136 representative and to the office ~~local ombudsman council~~ within
1137 5 business days after signature by the resident or resident
1138 designee.

1139 (9) A resident may request that the office ~~local ombudsman~~
1140 ~~council~~ review any notice of discharge or transfer given to the
1141 resident. When requested by a resident to review a notice of
1142 discharge or transfer, the office ~~local ombudsman council~~ shall
1143 do so within 7 days after receipt of the request. The nursing
1144 home administrator, or the administrator's designee, must
1145 forward the request for review contained in the notice to the
1146 office ~~local ombudsman council~~ within 24 hours after such
1147 request is submitted. Failure to forward the request within 24
1148 hours after the request is submitted shall toll the running of
1149 the 30-day advance notice period until the request has been
1150 forwarded.

1151 (11) Notwithstanding paragraph (10) (b), an emergency
1152 discharge or transfer may be implemented as necessary pursuant
1153 to state or federal law during the ~~period of~~ time after the
1154 notice is given and before the time a hearing decision is
1155 rendered. Notice of an emergency discharge or transfer to the
1156 resident, the resident's legal guardian or representative, and
1157 the office ~~local ombudsman council~~ if requested pursuant to
1158 subsection (9) must be by telephone or in person. This notice
1159 shall be given before the transfer, if possible, or as soon
1160 thereafter as practicable. A representative of the office ~~local~~

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1161 ~~ombudsman council~~ conducting a review under this subsection
1162 shall do so within 24 hours after receipt of the request. The
1163 resident's file must be documented to show who was contacted,
1164 whether the contact was by telephone or in person, and the date
1165 and time of the contact. If the notice is not given in writing,
1166 written notice meeting the requirements of subsection (8) must
1167 be given the next working day.

1168 (12) After receipt of any notice required under this
1169 section, the office ~~local ombudsman council~~ may request a
1170 private informal conversation with a resident to whom the notice
1171 is directed, and, if known, a family member or the resident's
1172 legal guardian or designee, to ensure that the facility is
1173 proceeding with the discharge or transfer in accordance with ~~the~~
1174 ~~requirements of~~ this section. If requested, the office ~~local~~
1175 ~~ombudsman council~~ shall assist the resident with filing an
1176 appeal of the proposed discharge or transfer.

1177 (13) The following persons must be present at all hearings
1178 authorized under this section:

1179 (a) The resident, or the resident's legal representative or
1180 designee.

1181 (b) The facility administrator, or the facility's legal
1182 representative or designee.

1183
1184 A representative of the office ~~local long-term care ombudsman~~
1185 ~~council~~ may be present at all hearings authorized by this
1186 section.

1187 (14) In any hearing under this section, the following
1188 information concerning the parties shall be confidential and
1189 exempt from ~~the provisions of~~ s. 119.07(1):

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- 1190 (a) Names and addresses.
- 1191 (b) Medical services provided.
- 1192 (c) Social and economic conditions or circumstances.
- 1193 (d) Evaluation of personal information.
- 1194 (e) Medical data, including diagnosis and past history of
- 1195 disease or disability.
- 1196 (f) Any information received verifying income eligibility
- 1197 and amount of medical assistance payments. Income information
- 1198 received from the Social Security Administration or the Internal
- 1199 Revenue Service must be safeguarded according to the
- 1200 requirements of the agency that furnished the data.

1201

1202 The exemption created by this subsection does not prohibit

1203 access to such information by a representative of the office

1204 ~~local long term care ombudsman council~~ upon request, by a

1205 reviewing court if such information is required to be part of

1206 the record upon subsequent review, or as specified in s. 24(a),

1207 Art. I of the State Constitution.

1208 Section 23. Subsection (2) of section 400.1413, Florida

1209 Statutes, is amended to read:

1210 400.1413 Volunteers in nursing homes.—

1211 (2) This section does not affect the activities of the

1212 ~~state or local long term care ombudsman program councils~~

1213 authorized under part I.

1214 Section 24. Paragraph (d) of subsection (5) of section

1215 400.162, Florida Statutes, is amended to read:

1216 400.162 Property and personal affairs of residents.—

1217 (5)

1218 (d) If, at any time during the period for which a license

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1219 is issued, a licensee that has not purchased a surety bond or
1220 entered into a self-insurance agreement, as provided in
1221 paragraphs (b) and (c), is requested to provide safekeeping for
1222 the personal funds of a resident, the licensee shall notify the
1223 agency of the request and make application for a surety bond or
1224 for participation in a self-insurance agreement within 7 days
1225 after ~~of~~ the request, exclusive of weekends and holidays. Copies
1226 of the application, along with written documentation of related
1227 correspondence with an insurance agency or group, shall be
1228 maintained by the licensee for review by the agency and the
1229 office state Nursing Home and Long Term Care Facility ombudsman
1230 Council.

1231 Section 25. Subsections (1) and (4) of section 400.19,
1232 Florida Statutes, are amended to read:

1233 400.19 Right of entry and inspection.-

1234 (1) In accordance with part II of chapter 408, the agency
1235 and any duly designated officer or employee thereof or a
1236 representative member of the office state Long Term Care
1237 ombudsman Council ~~or the local long-term care ombudsman council~~
1238 shall have the right to enter upon and into the premises of any
1239 facility licensed pursuant to this part, or any distinct nursing
1240 home unit of a hospital licensed under chapter 395 or any
1241 freestanding facility licensed under chapter 395 which ~~that~~
1242 provides extended care or other long-term care services, at any
1243 reasonable time in order to determine the state of compliance
1244 with ~~the provisions of~~ this part, part II of chapter 408, and
1245 applicable rules in force pursuant thereto. The agency shall,
1246 within 60 days after receipt of a complaint made by a resident
1247 or resident's representative, complete its investigation and

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1248 provide to the complainant its findings and resolution.

1249 (4) The agency shall conduct unannounced onsite facility
1250 reviews following written verification of licensee noncompliance
1251 in instances in which the office ~~a long-term care ombudsman~~
1252 ~~council~~, pursuant to ss. 400.0071 and 400.0075, has received a
1253 complaint and has documented deficiencies in resident care or in
1254 the physical plant of the facility that threaten the health,
1255 safety, or security of residents, or when the agency documents
1256 through inspection that conditions in a facility present a
1257 direct or indirect threat to the health, safety, or security of
1258 residents. However, the agency shall conduct unannounced onsite
1259 reviews every 3 months of each facility while the facility has a
1260 conditional license. Deficiencies related to physical plant do
1261 not require followup reviews after the agency has determined
1262 that correction of the deficiency has been accomplished and that
1263 the correction is of the nature that continued compliance can be
1264 reasonably expected.

1265 Section 26. Subsection (1) of section 400.191, Florida
1266 Statutes, is amended to read:

1267 400.191 Availability, distribution, and posting of reports
1268 and records.—

1269 (1) The agency shall provide information to the public
1270 about all of the licensed nursing home facilities operating in
1271 the state. The agency shall, within 60 days after a licensure
1272 inspection visit or within 30 days after any interim visit to a
1273 facility, send copies of the inspection reports to the office
1274 ~~local long-term care ombudsman council~~, the agency's local
1275 office, and a public library or the county seat for the county
1276 in which the facility is located. The agency may provide

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1277 electronic access to inspection reports as a substitute for
1278 sending copies.

1279 Section 27. Subsection (6) and paragraph (c) of subsection
1280 (7) of section 400.23, Florida Statutes, are amended to read:

1281 400.23 Rules; evaluation and deficiencies; licensure
1282 status.—

1283 (6) Before ~~Prior to~~ conducting a survey of the facility,
1284 the survey team shall obtain a copy of the office's ~~local long-~~
1285 ~~term care ombudsman council~~ report on the facility. Problems
1286 noted in the report shall be incorporated into and followed up
1287 through the agency's inspection process. This procedure does not
1288 preclude the office ~~local long-term care ombudsman council~~ from
1289 requesting the agency to conduct a followup visit to the
1290 facility.

1291 (7) The agency shall, at least every 15 months, evaluate
1292 all nursing home facilities and make a determination as to the
1293 degree of compliance by each licensee with the established rules
1294 adopted under this part as a basis for assigning a licensure
1295 status to that facility. The agency shall base its evaluation on
1296 the most recent inspection report, taking into consideration
1297 findings from other official reports, surveys, interviews,
1298 investigations, and inspections. In addition to license
1299 categories authorized under part II of chapter 408, the agency
1300 shall assign a licensure status of standard or conditional to
1301 each nursing home.

1302 (c) In evaluating the overall quality of care and services
1303 and determining whether the facility will receive a conditional
1304 or standard license, the agency shall consider the needs and
1305 limitations of residents in the facility and the results of

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1306 interviews and surveys of a representative sampling of
1307 residents, families of residents, representatives of the office
1308 ~~ombudsman council members in the planning and service area in~~
1309 ~~which the facility is located~~, guardians of residents, and staff
1310 of the nursing home facility.

1311 Section 28. Paragraph (a) of subsection (3), paragraph (f)
1312 of subsection (5), and subsection (6) of section 400.235,
1313 Florida Statutes, are amended to read:

1314 400.235 Nursing home quality and licensure status; Gold
1315 Seal Program.—

1316 (3) (a) The Gold Seal Program shall be developed and
1317 implemented by the Governor's Panel on Excellence in Long-Term
1318 Care which shall operate under the authority of the Executive
1319 Office of the Governor. The panel shall be composed of three
1320 persons appointed by the Governor, to include a consumer
1321 advocate for senior citizens and two persons with expertise in
1322 the fields of quality management, service delivery excellence,
1323 or public sector accountability; three persons appointed by the
1324 Secretary of Elderly Affairs, to include an active member of a
1325 nursing facility family and resident care council and a member
1326 of the University Consortium on Aging; a representative of the
1327 Office of State Long-Term Care Ombudsman; one person appointed
1328 by the Florida Life Care Residents Association; one person
1329 appointed by the State Surgeon General; two persons appointed by
1330 the Secretary of Health Care Administration; one person
1331 appointed by the Florida Association of Homes for the Aging; and
1332 one person appointed by the Florida Health Care Association.
1333 Vacancies on the panel shall be filled in the same manner as the
1334 original appointments.

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1335 (5) Facilities must meet the following additional criteria
1336 for recognition as a Gold Seal Program facility:

1337 (f) Evidence an outstanding record regarding the number and
1338 types of substantiated complaints reported to the Office of
1339 State Long-Term Care Ombudsman ~~Council~~ within the 30 months
1340 preceding application for the program.

1341
1342 A facility assigned a conditional licensure status may not
1343 qualify for consideration for the Gold Seal Program until after
1344 it has operated for 30 months with no class I or class II
1345 deficiencies and has completed a regularly scheduled relicensure
1346 survey.

1347 (6) The agency, nursing facility industry organizations,
1348 consumers, Office of State Long-Term Care Ombudsman ~~Council~~, and
1349 members of the community may recommend to the Governor
1350 facilities that meet the established criteria for consideration
1351 for and award of the Gold Seal. The panel shall review nominees
1352 and make a recommendation to the Governor for final approval and
1353 award. The decision of the Governor is final and is not subject
1354 to appeal.

1355 Section 29. Present subsections (18) through (28) of
1356 section 415.102, Florida Statutes, are redesignated as
1357 subsections (19) through (29), respectively, and a new
1358 subsection (18) is added to that section, to read:

1359 415.102 Definitions of terms used in ss. 415.101-415.113.-
1360 As used in ss. 415.101-415.113, the term:

1361 (18) "Office" has the same meaning as in s. 400.0060.

1362 Section 30. Paragraph (a) of subsection (1) of section
1363 415.1034, Florida Statutes, is amended to read:

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1364 415.1034 Mandatory reporting of abuse, neglect, or
 1365 exploitation of vulnerable adults; mandatory reports of death.—
 1366 (1) MANDATORY REPORTING.—
 1367 (a) Any person, including, but not limited to, any:
 1368 1. Physician, osteopathic physician, medical examiner,
 1369 chiropractic physician, nurse, paramedic, emergency medical
 1370 technician, or hospital personnel engaged in the admission,
 1371 examination, care, or treatment of vulnerable adults;
 1372 2. Health professional or mental health professional other
 1373 than one listed in subparagraph 1.;
 1374 3. Practitioner who relies solely on spiritual means for
 1375 healing;
 1376 4. Nursing home staff; assisted living facility staff;
 1377 adult day care center staff; adult family-care home staff;
 1378 social worker; or other professional adult care, residential, or
 1379 institutional staff;
 1380 5. State, county, or municipal criminal justice employee or
 1381 law enforcement officer;
 1382 6. ~~An~~ Employee of the Department of Business and
 1383 Professional Regulation conducting inspections of public lodging
 1384 establishments under s. 509.032;
 1385 7. Florida advocacy council member or representative of the
 1386 Office of State Long-Term Care Ombudsman ~~council member~~; or
 1387 8. Bank, savings and loan, or credit union officer,
 1388 trustee, or employee,
 1389
 1390 who knows, or has reasonable cause to suspect, that a vulnerable
 1391 adult has been or is being abused, neglected, or exploited shall
 1392 immediately report such knowledge or suspicion to the central

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1393 abuse hotline.

1394 Section 31. Subsection (1) of section 415.104, Florida
1395 Statutes, is amended to read:

1396 415.104 Protective investigations of cases of abuse,
1397 neglect, or exploitation of vulnerable adults; transmittal of
1398 records to state attorney.—

1399 (1) The department shall, upon receipt of a report alleging
1400 abuse, neglect, or exploitation of a vulnerable adult, begin
1401 within 24 hours a protective investigation of the facts alleged
1402 therein. If a caregiver refuses to allow the department to begin
1403 a protective investigation or interferes with the conduct of
1404 such an investigation, the appropriate law enforcement agency
1405 shall be contacted for assistance. If, during the course of the
1406 investigation, the department has reason to believe that the
1407 abuse, neglect, or exploitation is perpetrated by a second
1408 party, the appropriate law enforcement agency and state attorney
1409 shall be orally notified. The department and the law enforcement
1410 agency shall cooperate to allow the criminal investigation to
1411 proceed concurrently with, and not be hindered by, the
1412 protective investigation. The department shall make a
1413 preliminary written report to the law enforcement agencies
1414 within 5 working days after the oral report. The department
1415 shall, within 24 hours after receipt of the report, notify the
1416 appropriate Florida local advocacy council, or the office long-
1417 ~~term care ombudsman council~~, when appropriate, that an alleged
1418 abuse, neglect, or exploitation perpetrated by a second party
1419 has occurred. Notice to the Florida local advocacy council or
1420 the office long-term care ombudsman council may be accomplished
1421 orally or in writing and shall include the name and location of

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1422 the vulnerable adult alleged to have been abused, neglected, or
1423 exploited and the nature of the report.

1424 Section 32. Subsection (8) of section 415.1055, Florida
1425 Statutes, is amended to read:

1426 415.1055 Notification to administrative entities.—

1427 (8) At the conclusion of a protective investigation at a
1428 facility, the department shall notify ~~either~~ the Florida local
1429 advocacy council or the office ~~long-term care ombudsman council~~
1430 of the results of the investigation. This notification must be
1431 in writing.

1432 Section 33. Subsection (2) of section 415.106, Florida
1433 Statutes, is amended to read:

1434 415.106 Cooperation by the department and criminal justice
1435 and other agencies.—

1436 (2) To ensure coordination, communication, and cooperation
1437 with the investigation of abuse, neglect, or exploitation of
1438 vulnerable adults, the department shall develop and maintain
1439 interprogram agreements or operational procedures among
1440 appropriate departmental programs and the Office of State Long-
1441 Term Care Ombudsman Council, the Florida Statewide Advocacy
1442 Council, and other agencies that provide services to vulnerable
1443 adults. These agreements or procedures must cover such subjects
1444 as the appropriate roles and responsibilities of the department
1445 in identifying and responding to reports of abuse, neglect, or
1446 exploitation of vulnerable adults; the provision of services;
1447 and related coordinated activities.

1448 Section 34. Paragraph (g) of subsection (3) of section
1449 415.107, Florida Statutes, is amended to read:

1450 415.107 Confidentiality of reports and records.—

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1451 (3) Access to all records, excluding the name of the
1452 reporter which shall be released only as provided in subsection
1453 (6), shall be granted only to the following persons, officials,
1454 and agencies:

1455 (g) Any appropriate official of the Florida advocacy
1456 council or the office ~~long-term care ombudsman council~~
1457 investigating a report of known or suspected abuse, neglect, or
1458 exploitation of a vulnerable adult.

1459 Section 35. Present subsections (16) through (26) of
1460 section 429.02, Florida Statutes, are redesignated as
1461 subsections (17) through (27), respectively, present subsections
1462 (11) and (20) are amended, and a new subsection (16) is added to
1463 that section, to read:

1464 429.02 Definitions.—When used in this part, the term:

1465 (11) "Extended congregate care" means acts beyond those
1466 authorized in subsection (17) ~~(16)~~ that may be performed
1467 pursuant to part I of chapter 464 by persons licensed thereunder
1468 while carrying out their professional duties, and other
1469 supportive services which may be specified by rule. The purpose
1470 of such services is to enable residents to age in place in a
1471 residential environment despite mental or physical limitations
1472 that might otherwise disqualify them from residency in a
1473 facility licensed under this part.

1474 (16) "Office" has the same meaning as in s. 400.0060.

1475 (21) ~~(20)~~ "Resident's representative or designee" means a
1476 person other than the owner, or an agent or employee of the
1477 facility, designated in writing by the resident, if legally
1478 competent, to receive notice of changes in the contract executed
1479 pursuant to s. 429.24; to receive notice of and to participate

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1480 in meetings between the resident and the facility owner,
1481 administrator, or staff concerning the rights of the resident;
1482 to assist the resident in contacting the office ombudsman
1483 ~~council~~ if the resident has a complaint against the facility; or
1484 to bring legal action on behalf of the resident pursuant to s.
1485 429.29.

1486 Section 36. Paragraph (b) of subsection (3) of section
1487 429.07, Florida Statutes, is amended to read:

1488 429.07 License required; fee.—

1489 (3) In addition to the requirements of s. 408.806, each
1490 license granted by the agency must state the type of care for
1491 which the license is granted. Licenses shall be issued for one
1492 or more of the following categories of care: standard, extended
1493 congregate care, limited nursing services, or limited mental
1494 health.

1495 (b) An extended congregate care license shall be issued to
1496 facilities providing, directly or through contract, services
1497 beyond those authorized in paragraph (a), including services
1498 performed by persons licensed under part I of chapter 464 and
1499 supportive services, as defined by rule, to persons who would
1500 otherwise be disqualified from continued residence in a facility
1501 licensed under this part.

1502 1. In order for extended congregate care services to be
1503 provided, the agency must first determine that all requirements
1504 established in law and rule are met and must specifically
1505 designate, on the facility's license, that such services may be
1506 provided and whether the designation applies to all or part of
1507 the facility. Such designation may be made at the time of
1508 initial licensure or relicensure, or upon request in writing by

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1509 a licensee under this part and part II of chapter 408. The
1510 notification of approval or the denial of the request shall be
1511 made in accordance with part II of chapter 408. Existing
1512 facilities qualifying to provide extended congregate care
1513 services must have maintained a standard license and may not
1514 have been subject to administrative sanctions during the
1515 previous 2 years, or since initial licensure if the facility has
1516 been licensed for less than 2 years, for any of the following
1517 reasons:

- 1518 a. A class I or class II violation;
- 1519 b. Three or more repeat or recurring class III violations
1520 of identical or similar resident care standards from which a
1521 pattern of noncompliance is found by the agency;
- 1522 c. Three or more class III violations that were not
1523 corrected in accordance with the corrective action plan approved
1524 by the agency;
- 1525 d. Violation of resident care standards which results in
1526 requiring the facility to employ the services of a consultant
1527 pharmacist or consultant dietitian;
- 1528 e. Denial, suspension, or revocation of a license for
1529 another facility licensed under this part in which the applicant
1530 for an extended congregate care license has at least 25 percent
1531 ownership interest; or
- 1532 f. Imposition of a moratorium pursuant to this part or part
1533 II of chapter 408 or initiation of injunctive proceedings.

1534 2. A facility that is licensed to provide extended
1535 congregate care services shall maintain a written progress
1536 report on each person who receives services which describes the
1537 type, amount, duration, scope, and outcome of services that are

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1538 rendered and the general status of the resident's health. A
1539 registered nurse, or appropriate designee, representing the
1540 agency shall visit the facility at least quarterly to monitor
1541 residents who are receiving extended congregate care services
1542 and to determine whether ~~if~~ the facility is in compliance with
1543 this part, part II of chapter 408, and relevant rules. One of
1544 the visits may be in conjunction with the regular survey. The
1545 monitoring visits may be provided through contractual
1546 arrangements with appropriate community agencies. A registered
1547 nurse shall serve as part of the team that inspects the
1548 facility. The agency may waive one of the required yearly
1549 monitoring visits for a facility that has been licensed for at
1550 least 24 months to provide extended congregate care services,
1551 if, during the inspection, the registered nurse determines that
1552 extended congregate care services are being provided
1553 appropriately, and if the facility has no class I or class II
1554 violations and no uncorrected class III violations. The agency
1555 must first consult with the office ~~long-term care ombudsman~~
1556 ~~council~~ for the area in which the facility is located to
1557 determine whether ~~if~~ any complaints have been made and
1558 substantiated about the quality of services or care. The agency
1559 may not waive one of the required yearly monitoring visits if
1560 complaints have been made and substantiated.

1561 3. A facility that is licensed to provide extended
1562 congregate care services must:

1563 a. Demonstrate the capability to meet unanticipated
1564 resident service needs.

1565 b. Offer a physical environment that promotes a homelike
1566 setting, provides for resident privacy, promotes resident

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1567 independence, and allows sufficient congregate space as defined
1568 by rule.

1569 c. Have sufficient staff available, taking into account the
1570 physical plant and firesafety features of the building, to
1571 assist with the evacuation of residents in an emergency.

1572 d. Adopt and follow policies and procedures that maximize
1573 resident independence, dignity, choice, and decisionmaking to
1574 permit residents to age in place, so that moves due to changes
1575 in functional status are minimized or avoided.

1576 e. Allow residents or, if applicable, a resident's
1577 representative, designee, surrogate, guardian, or attorney in
1578 fact to make a variety of personal choices, participate in
1579 developing service plans, and share responsibility in
1580 decisionmaking.

1581 f. Implement the concept of managed risk.

1582 g. Provide, directly or through contract, the services of a
1583 person licensed under part I of chapter 464.

1584 h. In addition to the training mandated in s. 429.52,
1585 provide specialized training as defined by rule for facility
1586 staff.

1587 4. A facility that is licensed to provide extended
1588 congregate care services is exempt from the criteria for
1589 continued residency set forth in rules adopted under s. 429.41.
1590 A licensed facility must adopt its own requirements within
1591 guidelines for continued residency set forth by rule. However,
1592 the facility may not serve residents who require 24-hour nursing
1593 supervision. A licensed facility that provides extended
1594 congregate care services must also provide each resident with a
1595 written copy of facility policies governing admission and

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1596 retention.

1597 5. The primary purpose of extended congregate care services
1598 is to allow residents, as they become more impaired, the option
1599 of remaining in a familiar setting from which they would
1600 otherwise be disqualified for continued residency. A facility
1601 licensed to provide extended congregate care services may also
1602 admit an individual who exceeds the admission criteria for a
1603 facility with a standard license, if the individual is
1604 determined appropriate for admission to the extended congregate
1605 care facility.

1606 6. Before the admission of an individual to a facility
1607 licensed to provide extended congregate care services, the
1608 individual must undergo a medical examination as provided in s.
1609 429.26(4) and the facility must develop a preliminary service
1610 plan for the individual.

1611 7. When a facility can no longer provide or arrange for
1612 services in accordance with the resident's service plan and
1613 needs and the facility's policy, the facility shall make
1614 arrangements for relocating the person in accordance with s.
1615 429.28(1)(k).

1616 8. Failure to provide extended congregate care services may
1617 result in denial of extended congregate care license renewal.

1618 Section 37. Subsection (9) of section 429.19, Florida
1619 Statutes, is amended to read:

1620 429.19 Violations; imposition of administrative fines;
1621 grounds.—

1622 (9) The agency shall develop and disseminate an annual list
1623 of all facilities sanctioned or fined for violations of state
1624 standards, the number and class of violations involved, the

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1625 penalties imposed, and the current status of cases. The list
1626 shall be disseminated, at no charge, to the Department of
1627 Elderly Affairs, the Department of Health, the Department of
1628 Children and Families ~~Family Services~~, the Agency for Persons
1629 with Disabilities, the area agencies on aging, the Florida
1630 Statewide Advocacy Council, and the office ~~state and local~~
1631 ~~ombudsman councils~~. The Department of Children and Families
1632 ~~Family Services~~ shall disseminate the list to service providers
1633 under contract to the department who are responsible for
1634 referring persons to a facility for residency. The agency may
1635 charge a fee commensurate with the cost of printing and postage
1636 to other interested parties requesting a copy of this list. This
1637 information may be provided electronically or through the
1638 agency's Internet site.

1639 Section 38. Subsection (8) of section 429.26, Florida
1640 Statutes, is amended to read:

1641 429.26 Appropriateness of placements; examinations of
1642 residents.—

1643 (8) The Department of Children and Families ~~Family Services~~
1644 may require an examination for supplemental security income and
1645 optional state supplementation recipients residing in facilities
1646 at any time and shall provide the examination whenever a
1647 resident's condition requires it. Any facility administrator;
1648 personnel of the agency, the department, or the Department of
1649 Children and Families ~~Family Services~~; or representative of the
1650 Office of the State Long-Term Care Ombudsman ~~long-term care~~
1651 ~~ombudsman council member~~ who believes a resident needs to be
1652 evaluated shall notify the resident's case manager, who shall
1653 take appropriate action. A report of the examination findings

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1654 shall be provided to the resident's case manager and the
1655 facility administrator to help the administrator meet his or her
1656 responsibilities under subsection (1).

1657 Section 39. Subsection (2) and paragraph (b) of subsection
1658 (3) of section 429.28, Florida Statutes, are amended to read:

1659 429.28 Resident bill of rights.—

1660 (2) The administrator of a facility shall ensure that a
1661 written notice of the rights, obligations, and prohibitions set
1662 forth in this part is posted in a prominent place in each
1663 facility and read or explained to residents who cannot read.
1664 This notice must ~~shall~~ include the statewide toll-free telephone
1665 number and e-mail address of the state ombudsman program and the
1666 telephone number of the ~~name, address, and telephone numbers of~~
1667 ~~the local ombudsman council~~ and central abuse hotline and, when
1668 applicable, the Advocacy Center for Persons with Disabilities,
1669 Inc., and the Florida local advocacy council, where complaints
1670 may be lodged. The facility must ensure a resident's access to a
1671 telephone to call the state ~~local~~ ombudsman program ~~council~~, the
1672 central abuse hotline, the Advocacy Center for Persons with
1673 Disabilities, Inc., and the Florida local advocacy council.

1674 (3)

1675 (b) In order to determine whether the facility is
1676 adequately protecting residents' rights, the biennial survey
1677 shall include private informal conversations with a sample of
1678 residents and consultation with the state ombudsman program
1679 ~~council~~ in the planning and service area in which the facility
1680 is located to discuss residents' experiences within the
1681 facility.

1682 Section 40. Section 429.34, Florida Statutes, is amended to

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1683 read:

1684 429.34 Right of entry and inspection.—In addition to the
 1685 requirements of s. 408.811, a ~~any~~ duly designated officer or
 1686 employee of the department, the Department of Children and
 1687 Families ~~Family Services~~, the Medicaid Fraud Control Unit of the
 1688 Office of the Attorney General, the state or local fire marshal,
 1689 or a representative member of the Office of the State Long-Term
 1690 Care Ombudsman ~~may state or local long-term care ombudsman~~
 1691 ~~council shall have the right to~~ enter unannounced upon and into
 1692 the premises of any facility licensed under ~~pursuant to~~ this
 1693 part in order to determine the state of compliance with ~~the~~
 1694 ~~provisions of~~ this part, part II of chapter 408, and applicable
 1695 rules. Data collected by the office ~~state or local long-term~~
 1696 ~~care ombudsman councils~~ or the state or local advocacy councils
 1697 may be used by the agency in investigations involving violations
 1698 of regulatory standards.

1699 Section 41. Subsection (2) of section 429.35, Florida
 1700 Statutes, is amended to read:

1701 429.35 Maintenance of records; reports.—

1702 (2) Within 60 days after the date of the biennial
 1703 inspection visit required under s. 408.811 or within 30 days
 1704 after the date of any interim visit, the agency shall forward
 1705 the results of the inspection to the office ~~local ombudsman~~
 1706 ~~council in whose planning and service area, as defined in part~~
 1707 ~~II of chapter 400, the facility is located;~~ to at least one
 1708 public library or, in the absence of a public library, the
 1709 county seat in the county in which the inspected assisted living
 1710 facility is located; and, when appropriate, to the district
 1711 Adult Services and Mental Health Program Offices.

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1712 Section 42. Subsection (6) of section 429.67, Florida
1713 Statutes, is amended to read:

1714 429.67 Licensure.—

1715 (6) In addition to the requirements of s. 408.811, access
1716 to a licensed adult family-care home must be provided at
1717 reasonable times for the appropriate officials of the
1718 department, the Department of Health, the Department of Children
1719 and Families ~~Family Services~~, the agency, and the State Fire
1720 Marshal, who are responsible for the development and maintenance
1721 of fire, health, sanitary, and safety standards, to inspect the
1722 facility to assure compliance with these standards. In addition,
1723 access to a licensed adult family-care home must be provided at
1724 reasonable times to representatives of the Office of State ~~for~~
1725 ~~the local~~ Long-Term Care Ombudsman ~~council~~.

1726 Section 43. Subsection (2) of section 429.85, Florida
1727 Statutes, is amended to read:

1728 429.85 Residents' bill of rights.—

1729 (2) The provider shall ensure that residents and their
1730 legal representatives are made aware of the rights, obligations,
1731 and prohibitions set forth in this part. Residents must also be
1732 given the statewide toll-free telephone number and e-mail
1733 address of the state ombudsman program and the telephone number
1734 of names, addresses, and telephone numbers of the local
1735 ~~ombudsman council~~ and the central abuse hotline where they may
1736 lodge complaints.

1737 Section 44. Subsection (17) of section 744.444, Florida
1738 Statutes, is amended to read:

1739 744.444 Power of guardian without court approval.—Without
1740 obtaining court approval, a plenary guardian of the property, or

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1741 a limited guardian of the property within the powers granted by
1742 the order appointing the guardian or an approved annual or
1743 amended guardianship report, may:

1744 (17) Provide confidential information about a ward which
1745 ~~that~~ is related to an investigation arising under part I of
1746 chapter 400 to a representative of the Office of the State Long-
1747 Term Care Ombudsman ~~local or state ombudsman council member~~
1748 conducting such an investigation. Any such ombudsman shall have
1749 a duty to maintain the confidentiality of such information.

1750 Section 45. This act shall take effect July 1, 2014.